

***United States Court of Appeals
for the Second Circuit***



APPENDIX

4093
75-4203

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

X

FLORENTINO A. ZAMORA,
MARIA L. ZAMORA,
ROBERTO ZAMORA,

Petitioners,

-against-

Docket No. 75-4093

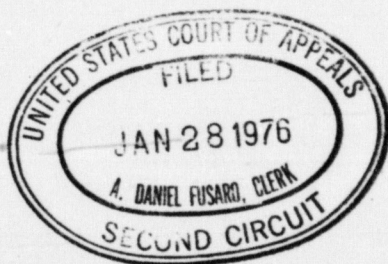
IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

X

PETITION TO REVIEW
A FINAL ORDER OF
THE BOARD OF IMMIGRATION APPEALS

PETITIONER'S APPENDIX



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P/S

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20 West Broadway
New York, New York 10007

A20 366 284 DR/AL
A20 366 285
A20 366 286

February 7, 1974

Director
Department of State
Office of Refugee and Migration Affairs
Washington, D.C.

Dear Sir:

Your recommendation is requested in the case of Mr. & Mrs. Florentino Alonso Zamora and their son Roberto.

Mr. Zamora, born October 30, 1936, his wife Maria Louisa Zamora, born June 30, 1937 and their son Roberto, born June 14, 1968 are natives and citizens of the Philippines. They have no close family ties in the United States.

Mr. Zamora last entered the United States at Honolulu, Hawaii on October 10, 1970 as a visitor for business for the purpose of going to the Sherwin Williams Paint Company in Cleveland, Ohio to observe manufacture and application of paints. He never reported to the company. He was permitted to remain in the United States until December 30, 1970 and he requested and received the following extensions from December 30, 1970 to April 10, 1971, April 6, 1971 to October 9, 1971, and September 30, 1971 to October 30, 1971. He has neither requested nor received any further extensions. His passport, number 63038 issued on June 9, 1970 and valid until June 9, 1972 contains a b-2 visa issued by the American Consulate at Manila on August 28, 1970 and valid for one admission if presented before November 28, 1970.

Mrs. Zamora last entered the United States at Honolulu, Hawaii on January 16, 1971 as a visitor for pleasure until April 15, 1971 and she received an extension until October 15, 1971 and on October 9, 1971 a second extension was granted until January 15, 1972. She has neither requested nor received any further extensions. Her passport number 90226 issued on October 2, 1970 and valid until October 1, 1972, contains a b-2 visa issued by the American Consulate at Manila on October 19, 1970 and valid if presented before January 19, 1971 for one admission.

Mrs. Zamora was accompanied by her son Roberto. His passport number 90227, is similar in validity and visa to his mother's.

Ex 3A

A-1

On February 14, 1973, the Zamoras made a request for political asylum. The interview was held at this office on November 29, 1973.

The Zamoras fear persecution from the Marcos government should they return to the Philippines. They are engaged in the painting and construction business and Mr. Zamora states that the business is still operating as far as he knows. The Zamoras claim that their relatives will not or can not give a definite answer as to how the business is operating or how the family is. They claim all correspondence is censored. Their relatives have stated that they can not answer questions. The Zamoras have no clear picture of what is going on.

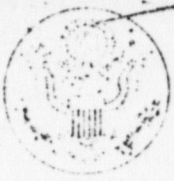
Mr. Zamora claims that he always participated in street demonstrations against Marcos but he was never an actual member of a political organization.

The Zamoras claim that a cousin of Mrs. Zamora is married to a nephew of Mr. Benigno S. Aquino, Jr., a former Opposition senator who is on trial charged with subversion and murder.

No member of the Zamora family has ever been involved politically nor has any member ever been arrested as far as they know.

Very truly yours,

MAURICE F. KILEY, ACTING
DISTRICT DIRECTOR
NEW YORK DISTRICT



DEPARTMENT OF STATE

Washington, D.C. 20520

REC-11

100 61074

27 FEB 1974

Dear Mr. Kiley:

This is in reply to your letter of February 7, 1974 concerning the request for asylum of Mr. & Mrs. Florentino Alonso Zamora and their son Roberto, (A20 366 284, 285 & 286 respectively), all citizens of the Philippines.

We do not find that the Zamora family have made a valid claim to asylum. They claim no political or other activity which might conceivably lead to their persecution on their return.

We believe that the Zamora family would be able to live in the Philippines at this time free of restraints other than those imposed on all Philippine citizens by the terms of the various martial law decrees. (100-61074)

On the basis of the information thus far submitted, we are unable to conclude that the Zamora family should be exempted from regular immigration procedures on the grounds that they would suffer persecution on account of race, religion, nationality, political opinion, or membership in a particular social group should they return to the Philippines. Should the Zamora family present additional information which to the Service seems to require further review, we will be pleased to give further consideration to their case.

Sincerely,

Louis A. Wiesner

Louis A. Wiesner

Director

Office of Refugee and
Migration Affairs

Mr. Maurice F. Kiley,
Acting District Director,
Immigration and Naturalization Service,
20 West Broadway,
New York, New York 10007.

Ex 3B

A-3

1 A Yes. (by both)
2 Q Did you file one for 1973?
3 A Yes we did.
4 Q How many exemptions did you claim?
5 A Three in all. (by both)
6 Q Have you ever been a member of the communist party, either in the
7 Philippines or in the United States or anywhere else in the world?
8 A No. (by both)
9 Q Have you ever had any trouble with the police anywhere in the world?
10 A No. (by both)
11 Q O.K. If permitted to leave the United States voluntarily instead of
12 being deported, do you have sufficient funds to do so with your son?
13 A Yes. (by both)
14 Q Are you willing to leave when and if required to do so by the Immigration
15 Service?
16 A Yes. (by both)
17 Q Your claim to political asylum according to the statement which you have,
18 we have submitted to the judge indicates that you have had a lack of
19 communication with events in the Philippines. Can you explain to the
20 judge a little more clearly perhaps, regarding your lack of communication?
21 A (By adult male) Whenever we called them up, my family in the Philippines,
22 they answered us but they have hesitating to answer all our questions
23 as to the conditions right now. Whenever we asked them questions re-
24 garding the business, the situation there, about my family and all the
25 relatives they did not answer me directly. They really didn't want
26 to answer about the situation over there.

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A (by adult female) They were mostly evasive - like we're O.K., don't
2 worry about us, that's like after them personally. But if you ask how
3 the situation is politically they won't make any comment.

4 Q Do you feel that from the knowledge of your family and your parents,
5 do you feel that this type of communication is what you would expect?

6 A No, definitely not. (by female)

7 Q You, in your affidavit or your letter indicate that you participated
8 in some street demonstration?

9 A Back in 19 - - -

10 IMMIGRATION JUDGE: Mr. Singer you refer to a letter - is this - - -

11 MR. SINGER: Yes, that is the one you are holding in your left hand which
12 was the one I initially referred to, but now I am changing it.

13 IMMIGRATION JUDGE: You have been referring to Exhibit 3, a letter of the
14 Acting District Director.

15 MR. SINGER: Right, right.

16 MR. SINGER TO RESPONDENTS:

17 Q In the statement given by you to the Immigration Service and later sent
18 to the State Department you indicated you had participated in some
19 street demonstration, can you describe the circumstances regarding such
20 demonstration?

21 A (By adult male) Well this demonstration - some friends of mine, class-
22 mates, formerly, classmates, they are members of this local movement -
23 Student Rightist's Movement - and they always stopped by and take me
24 along with them in street demonstrations against the government of
25 president Marcos, and I usually go with them, even though I am not a
26 member of that movement.

A-5

- 6 -

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Q Have you heard what has happened to any of these people in that move-
2 ment who have participated in the demonstration?
3 MR. SHADER: I object, it's immaterial.
4 IMMIGRATION JUDGE: Overruled.
5 MALE RESPONDENT: I beg your pardon.
6 MR. SINGER TO RESPONDENT:
7 Q Have you heard what has happened to any of the people who either parti-
8 cipated in this demonstration like or were in similar circumstances - - -
9 MR. SHADER: So the record may be clear, may we have the question of the
10 respondent as to when these alleged demonstrations took place.
11 MR. SINGER: Certainly.
12 A (By adult male) In August of 1970, I think.
13 MR. SHADER: Or is it 1969?
14 A (By adult male) Because I can't recall all the dates you know.
15 Because it is a long time, a couple of years, it must have been '69
16 or '70.
17 MR. SINGER TO RESPONDENTS:
18 Q Getting back to my question. Do you have any knowledge of what happened
19 to the other participants in the demonstration?
20 A (By adult male) Yes, Mr. Singer. I heard that some of them are in
21 jail - that's the last time I heard - I can't remember anything of
22 what happened to some of them.
23 MR. SINGER: I have no further questions on this subject.
24 IMMIGRATION JUDGE: Mr. Shader do you, or are you resting?
25 MR. SHADER: Off the record.
26 OFF THE RECORD - (ON THE RECORD)

A-6

- 7 -
TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 MR. SHADER TO ADULT MALE:

2 Q When was Marcos made president or head of the government of the
3 Philippines?

4 A When he became president?

5 Q When?

6 A In 1965.

7 Q You said some of your friends were arrested, how many friends were
8 there?

9 A Well those that were arrested, if I can recall, three or four.

10 Q When were they arrested?

11 A Right During the demonstration here.

12 Q And they were shortly released?

13 A Well I can't recall, I know nothing of their release.

14 MR. SHADER: That is all.

15 IMMIGRATION JUDGE TO RESPONDENTS:

16 Q Mr. and Mrs. Zamora, did each of you participate in these demonstra-
17 tions, or was it only you, Mr. Zamora?

18 A (By male adult) It was only me who participated.

19 Q And when did you participate in these demonstrations, please?

20 A Well/^{as}I said the demonstrations were '69 or '70, I don't recall the
21 date.

22 Q What time of the year in '69 or '70?

23 A The month you mean?

24 Q Yes, or the season. When was it, summer - winter?

25 A Probably it was summer.

26 Q Before you, Mr. Zamora, and your family came into the United States

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

MAY 24 1974

Files: A20 366 284 - New York
20 366 285 - " "
20 366 286 - " "

In the Matter of)

FLORENTINO ALONZO ZAMORA)
MARIA LUISA ZAMORA)
ROBERTO ZAMORA)

IN DEPORTATION PROCEEDINGS

Respondents)

CHARGE:

I & N Act - Section 241(a)(2) (8 USC 1251(a)(2)) -
Remained longer - visitor (each)

APPLICATION:

Voluntary departure; withholding deportation to
the Philippines - Section 243(h), I & N Act
(8 USC 1253(h)) (each)

In Behalf of Respondents:

Barst & Mukamal, Esqs.
127 John Street
New York, N. Y. 10038
Stephen Singer, Esq., of counsel

In Behalf of Service:

Allan A. Shader, Esq.
Trial Attorney

DECISION OF THE IMMIGRATION JUDGE

Respondents, husband, wife, and their 5 year old son, all aliens, native citizens of the Philippines, are each deportable for staying in the United States longer than permitted: the husband after October 30, 1971 upon admission October 10, 1970 as a business visitor; the others, beyond January 15, 1972 after admission January 16, 1971 as visitors for pleasure.

Voluntary departure has been requested for each respondent. That privilege will be discretionarily granted. However, should they, or any of them, now not leave as required deportation will be ordered. We must name the Philippines as the destination country if deportation ensue because no country has been designated by, or in behalf of, these respondents (Section 243(a), Immigration and Nationality Act).

Respondents request, under provisions of Section 243(h) of the Immigration and Nationality Act, withholding of possible deportation to the Philippines.

That Section reads:

"The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion, or political opinion and for such period of time as he deems to be necessary for such reason."

The burden is on respondents to establish eligibility for the requested relief (8 C.F.R. 242.17(c)).

The child's case obviously rests on that of his parents.

Adult male testifies that about the summer of 1969 or 1970 he participated in street demonstrations in the Philippines against the then president of that country who continues in that office. Adult male states some participants, but not he, were arrested at that time. He asserts that now whenever he communicates with his family in the Philippines they appear hesitant to answer his questions. Female respondent testifies the responses from the family in the Philippines are mostly evasive when queried about the political situation, answers not expected by her.

However, no respondent has ever been arrested or persecuted. Their Philippine passports, in their correct names, were issued after appearing at the appropriate Philippine government office.

Adult respondents state they now seek political asylum in the United States in order to permit their son to here enjoy civil liberties presently denied in the Philippines: freedom of speech, freedom of the press, and also the election of those who govern, freedoms indicated as not now existing in the Philippines. Adults point out that a cousin is married to the son of a sister of Senator Benigno, assertedly once a leading oppositionist. The Senator is asserted now to be in jail.

Three newspaper clippings submitted by respondents have been received in evidence:

Exhibit 6 from the New York Daily News of about December 7, 1973 datelined Manila the prior day, reports that the martial law government arrested 3 Catholic priests and at least 38 laymen identified with church social work;

Exhibit 5 from the New York Times January 13, 1974, also datelined Manila the prior day, reports the regrouping of Philippine communists mainly by recruiting from the universities. The clipping tells of the Philippine government's detention camps having held up to 8000, but now holding about five or six thousand, and the fact that prominent Filipinos have set up a campaign in the United States to discredit the present Philippine government.

Exhibit 7 is an advertisement in the December 18, 1973 issue of the New York Times stated to have been signed by Americans, apparently of stature, publicizing their concern over repressions in the Philippines. They solicit letters to our Senators and Congressmen to

suspend military and economic aid to the Philippines
till human rights are restored there. 1/

It must be remembered that withholding deportation is restricted to cases where there is the clear probability of persecution to the particular applicant (Lena v. Immigration and Naturalization Service, 379 F. 2d 536, 538 (7th Cir., 1967)). Additionally, as stated in Cheng Kai Fu v. Immigration and Naturalization Service, 386 F. 2d 750 (2nd Cir., 1967), cert. denied 390 U.S. 1003, the applicant must show he would be singled out as an individual by governmental authorities and suffer persecution therefrom in order to establish clear probability of persecution.

Adult respondents have not so shown. They indicate fear they would be persecuted in the Philippines. However that appears to be merely surmise.

Even if, as is asserted, the Philippines now has martial law, and absence of safeguards existing in the United States, adults have nevertheless not sustained their burden of establishing the likelihood that they would be persecuted in the Philippines. Nothing presented establishes that the Philippine government has been or now is aware of respondents or has any interest, any adverse interest, in them.

Adult respondents' fear and claim that persecution would result to them in the Philippines has not been established to be on a well founded basis that life or freedom would be there threatened because of race, religion,

I/ We have read and considered the entirety of exhibits 5 through 7. Our references to them are not intended to set forth the salient points of the exhibits which have been received in evidence for such value as appropriate. Respondents are not referred to in any of those exhibits.

nationality, political opinion or membership in a particular social group. The applications to withhold deportation must be denied.

Parenthetically, prior to these deportation proceedings the Immigration and Naturalization Service had referred respondents' request for political asylum to our Department of State soliciting the Department's views on the application (Exhibit 3A). In its reply, advising that respondent had not made out a valid case, the Department stated:

We do not find that the Zamora family have made a valid claim to asylum. They claim no political or other activity which might conceivably lead to their persecution on their return.

We believe that the Zamora family would be able to live in the Philippines at this time free of restraints other than those imposed on all Philippine citizens by the terms of the various martial law decrees. (Exhibit 3B)

In arriving at our determination adverse to respondents' Section 243(h) application we have not considered the views of the Department of State.

ORDER: IT IS ORDERED that in lieu of an order of deportation respondents be granted voluntary departure without expense to the Government on or before JUN 29 1974

IT IS FURTHER ORDERED that if respondents fail to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: respondents shall be deported from the United States to the Philippines on the charge contained in their respective Orders to Show Cause.

IT IS FURTHER ORDERED that respondents' application, under Section 243(h) of the Immigration and Nationality Act, to withhold deportation to the Philippines be DENIED.

Edward P. Emanuel

EDWARD P. EMANUEL
Immigration Judge



United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

APR 17 1975

Files: A20 366 284 - New York
A20 366 285
A20 366 286

In re: FLORENTINO ALONZO ZAMORA
MARIA LUISA ZAMORA
ROBERTO ZAMORA

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Steven Mukamal, Esquire
Barst & Mukamal
127 John Street
New York, New York 10038

ON BEHALF OF I&N SERVICE: Irving A. Appleman
Appellate Trial Attorney

ORAL ARGUMENT: October 2, 1974

CHARGES:

Order: Section 241(a)(2), I&N Act (8 U.S.C. 1251
(a)(2)) - nonimmigrant visitors -
remained longer than permitted

APPLICATION: Withholding of deportation

These cases present an appeal from a decision of the immigration judge on May 24, 1974, finding the respondents deportable and granting them the privilege of voluntary departure, with alternate orders of deportation. He denied the applications of the respondents for withholding of their deportation to the Republic of the Philippines, pursuant to the provisions of section 243(h) of the Immigration and Nationality Act, as amended. The appeal will be dismissed.

A20 366 284
A20 366 285
A20 366 286

Respondent Florentino Zamora, a native and citizen of the Philippines, entered the United States as a nonimmigrant visitor for business, for a temporary period in October 1970. He was authorized to remain in this country until October 30, 1971. His wife and their six-year-old son, also natives and citizens of the Philippines, entered the United States as nonimmigrant visitors for pleasure for a temporary period in January 1971. They were authorized to remain in this country until January 15, 1972. Deportability of all of the respondents has been established by clear, convincing and unequivocal evidence.

The immigration judge, noting that the child's case obviously rests on that of his parents, found that the fear of the parents that they would be persecuted in the Philippines "appears to be merely surmise". He concluded that even if, as asserted, the Philippines now has martial law, the adult respondents nevertheless had not sustained their burden of establishing the likelihood that they would be persecuted in the Philippines.

We have reviewed the record, including counsel's contention on appeal and at oral argument that the decision of the immigration judge was arbitrary, capricious and unfounded, and conclude that the decision was correct. In an official communication to the Service, the State Department indicated its belief that the Zamora family would be able to live in the Philippines free of restraints, other than those imposed on all Philippine citizens by the terms of various martial law decrees. The respondents have failed to show a well-founded fear that their lives or freedom would be threatened in the Philippines on account of their race, religion, nationality, membership in a particular social group, or political opinion. Matter of Dunar, Interim Decision 2192 (BIA 1973). We are satisfied, therefore, that the respondents would not be persecuted if deported to the Philippines. Accordingly, the decision of the immigration judge is affirmed.

ORDER: The appeal is dismissed.

A20 366 284
A20 366 285
A20 366 286

FURTHER ORDER: Pursuant to the immigration judge's order, the respondents are permitted to depart from the United States voluntarily within 36 days from the date of this order or any extension beyond that time as may be granted by the District Director; and in the event of failure so to depart, the respondents shall be deported as provided in the immigration judge's order.

LOUISE WILSON
Acting Chairman

Board Member Irving A. Appleman abstains from consideration of these cases.

We are seeking political asylum in this country to make sure that our young son will grow up enjoying the civil liberties that are now being denied to the people in the Philippines. We want him to enjoy the kind of freedom we have known in our country before the imposition of martial law - freedom of speech, the press and the right to elect the kind of people who will govern. We also want him to grow up and pursue the career of his choosing and not something that the government dictates him to undertake. These dreams are no longer possible in our country under the present martial law regime.

In September of 1972, when we first heard the news about the declaration of martial law, we tried to reach our families by phone but it was not till a week after that we were able to get through. When we did, our parents, brother and sister would not make one comment about what the situation is really like. All they would say was that they were safe.

We did get letters but there were now direct references as to what was really going on. From the tone of the letters, you can gather that they were evasive about answering our questions on the martial law status. All letters received from friends and family warned us about writing anything against the government as they strongly believed that mails were being censored. We sent tapes and letters and when received, they showed evidence of having been opened.

From newspapers and magazines here, we learned that a new form of government was established - something like having a president for life. Congress was abolished and dissenters were jailed. We have acquaintances who came to this country after the martial law was in effect and they had very little knowledge of what was actually taking place - we knew a lot more from news reports we read locally.

One of our cousins is married to the son of the sister of former Senator Benigno Aquino, once a leading oppositionist and who is still presently in jail, has warned all her kin about saying anything against what is happening in the country. A voice of dissent is readily silenced out of fear.

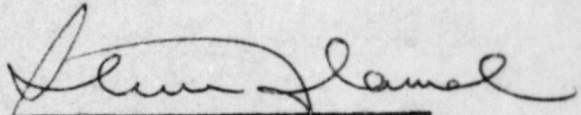
We are submitting herewith newsclippings taken from local papers supporting the foregoing paragraphs.



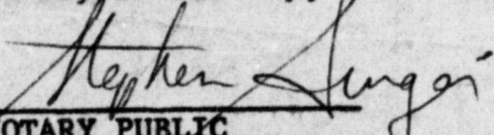
STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

STEVEN S. MUKAMAL, being duly sworn , deposes and says:

That he is a partner of the firm of Barst & Mukamal,
attorneys for the petitioner in the within proceedings; that he
has read the foregoing petition and knows the contents thereof;
that the same is true to his own knowledge, except as to the
matters therein stated to be alleged on information and belief
and that as to those matters, he believes it to be true.


STEVEN S. MUKAMAL

Sworn to before me this
27th day of January, 1976


NOTARY PUBLIC

STEPHEN SINGER
Notary Public State of New York
No. 30-9023418 Nassau County
Comm. Expires March 30, 19 76